

DCI/IC-77-0793
29 April 1977

MEMORANDUM FOR: Deputy to the DCI for the Intelligence Community

FROM : [REDACTED]
Special Assistant to the D/DCI/IC

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SUBJECT : SSCI 25 April Draft of "Intelligence Reorganization Act of 1977"

1. Reference is the latest draft of the Senate Select Committee on Intelligence proposed legislation, "Intelligence Reorganization Act of 1977," copy of which was provided by Bill Miller on 26 April. This is a revision of the 29 March draft earlier provided.

2. Bill Miller's note was marked: "For your information. This is the latest draft. More to come."

3. This memorandum has been prepared for your background use in discussions relating to the bill. At Tab A is a comparison of the roles and duties of the senior U.S. intelligence officer as set out for the "Director of National Intelligence" (DNI) in the SSCI draft bill, and for the DCI in E.O. 11905. The SSCI bill would give the DNI much more authority than the DCI now has. At Tab B is a brief discussion of each section of the SSCI bill, indicating where problems are identified.

4. While various aspects of the bill are highly debatable, there is only one aspect that I consider essentially unworkable, and that is the responsibility assigned to the DNI for departmental, tactical and intelligence-related activities as well as national intelligence activities.

a. The DNI is charged, for instance, to review all ongoing and proposed tactical, departmental and intelligence-related activities to "assure" that they are "properly and effectively directed, regulated, coordinated and administered," that they provide needed information, that they are not illegal or improper, and that they do not "adversely affect the national security, national defense, or foreign relations of the United States."

b. It can be expected that execution of these responsibilities would pose severe jurisdictional problems with the Joint Chiefs of Staff and the Secretary of Defense and their supporters in Congress.

5. Other provisions of the draft bill that raise the likelihood of overlap or conflict between DNI and JCS/SECDEF authorities or interests are these:

a. The DNI shall review all national, departmental, tactical and intelligence-related activities of the U.S. and make recommendations to the President, the National Security Council and the Congress regarding their "most effective relationships."

b. The DNI shall provide "guidance and direction" to the head of each IC entity to ensure the activities of each entity are "effectively and efficiently managed" and in conformity with the Constitution and laws of the U.S.

c. The DNI shall not only prepare the annual budget for all national intelligence activities, but also review and approve or disapprove all proposed reprogramming or fund transfer to or from any IC entity.

d. The DNI shall be responsible for security of U.S. communications. (COMSEC has not heretofore been an intelligence responsibility.)

e. The DNI shall have authority to terminate the employment of personnel of NSA and the special offices for reconnaissance, as well as CIA personnel.

6. Comment can be made on the bill without addressing whether or not the DNI also should head the CIA. By inference, the SSCI intends that the DNI be separated from CIA since the draft bill contains no reference to a particular relationship with CIA. If the phrase, "Act as operating head of the CIA" were added to the list of DNI duties in Sec. 106 no other amendment of the draft bill would be required to accommodate this change.

a. If the DNI is not the operating head of the CIA, staffing to execute his responsibilities could cause a partial dismantling of the Agency since the DNI is charged to "receive, correlate, analyze and evaluate all national intelligence and be responsible for the production of all national intelligence" and to "produce" NIEs and SNIEs. As part of his responsibility for national intelligence, a DNI separate from the CIA would require his own current intelligence/indications and warning staff.

7. One aspect of the bill which may pose considerable problem to the Administration is that the legislation would put the legislative branch on virtually a co-equal basis with the Executive branch in terms of the substantive intelligence and reports to be provided by the DNI.

8. The definitions of "national" and "departmental" intelligence continue to be troublesome since the differentiation is made on the basis of "primary use" which fails to recognize that the same information can be important at national, departmental and tactical levels.

9. The SSCI is progressively tightening the criteria for approval of covert actions. The present standard used by the OAG is that proposed CA be "important" to the national security. The 29 March SSCI bill enjoined the President from approving any special activity unless it was "necessary because of a grave threat to the national security." The 25 April draft would require that a proposed special activity be "essential to the national security."

10. The 25 April draft to which these comments and Tabs A and B apply is not even a complete Title I of the bill. Section 117, "Prohibitions on Particular Forms of Special Activities," has not yet been provided. Preliminary drafts of Title II, which will include charters for the various national intelligence agencies, are expected to be made available rather soon.

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(29 April 1977)

AUTHORITIES AND DUTIES
OF THE SENIOR U.S. INTELLIGENCE OFFICER

As Proposed for the Director of
National Intelligence (DNI) in
25 April Draft of SSCI bill,
Sec. 105

As Assigned to the Director of
Central Intelligence (DCI) in
E.O. 11905, Sec. 3(d)(1)

(a) be responsible for the
national intelligence activities
of the U.S.

(b) review all national, depart-
mental, tactical and intelligence-
related activities of the U.S. to
make recommendations to President,
NSC and Congress regarding their
"most effective relationships."

(c) review all ongoing and pro-
posed intelligence actions
(nat., dept., tac., and intel-
related) to assure they:

(1) are properly and
effectively:

directed,
regulated,
coordinated,
administered

(2) provide executive
and legislative branches
needed information;

3(d)(1)(iv) and (xi)

(3) safeguard
Constitutional and legal
rights

3(d)(1)(vi) establish procedures to
ensure propriety of requests from
and responses to White House and
other Executive departments.

(4) do not adversely affect the national security, national defense, or foreign relations of the U.S.

3(d)(1)(v) ensure appropriate implementation of special activities

(d)(1) serve as the President's primary advisor on intelligence

3(d)(1)(iv)

provide the President, Executive Branch and Congress with accurate, relevant and timely information and analysis

3(d)(i)(iv), (xi) and (xv)

(d)(2) keep the President and appropriate Congressional committees "fully and currently informed" of all national intelligence activities and anticipated activities

(d)(3) keep the President, NSC and appropriate Congressional committees informed on relationship among nat., Dept., tac. and intel-related activities

(d)(4) coordinate the national intelligence activities of the U.S.

provide guidance and direction to head of each IC entity to insure intelligence activities are:

effectively and
efficiently managed;
legal

(d)(5) control budget activities of all IC entities:

3(d)(1)(iii) ensure development/
submission of NFIP budget to CFI

prepare annual budget for
all national intelligence activities;

review and approve/disapprove
any proposed reprogramming or fund
transfer to or from any IC entity

Sec. 3(b)(2)(B) provides CFI shall
adopt rules governing reprogramming

(d)(6) establish requirements,
develop plans and assign priorities
for all national intelligence
activities

3(d)(1)(iv) develop national
intelligence requirements and
priorities

(d)(7) evaluate ongoing/proposed
intelligence activities to insure:

efficient use of resources;

fulfillment of national
intelligence requirements

(d)(8) establish procedures to:

maximize national intelli-
gence contribution by government
entities not within the IC;

maximize dept/tac intelli-
gence contributions to national
intelligence requirements

(d)(9) be responsible for production
of all national intelligence

3(d)(1)(iv) supervise production of
national intelligence

(d)(10) produce NIEs and SNIEs for
President and the Congress

3(d)(1)(iv) supervise production of
national intelligence

(d)(11) supervise dissemination of
national intelligence to executive
and legislative branches

3(d)(1)(iv) supervise dissemination of
national intelligence
3(d)(1)(xi) facilitate use of intelli-
gence products by Congress

(d)(12) evaluate on continuing
basis:

3(d)(1)(xv) consult with users and
producers of intelligence to ensure
timeliness, relevancy and quality of
the intelligence product

intelligence needs of
executive and legislative
branches;

accuracy, timeliness and

national intelligence

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(d)(13) establish standards of sensitivity for national intelligence activities and submit such to appropriate Congressional committees

(d)(14) implement procedures for review of ongoing/proposed national intelligence activities, taking account of their sensitivity;

provide for monitoring and evaluation of such procedures;

provide copies of procedures to appropriate Congressional committees

(d)(15) coordinate all clandestine collection of intelligence

(d)(16) coordinate activities to protect U.S. against:

foreign intelligence activities;
terrorism;
other hostile action;
international narcotics traffic

(d)(17) be responsible for all relationships between IC entities and foreign intelligence or internal security services

(d)(18) submit all agreements, etc. covered by (17) above to appropriate Congressional committees as required by law

(d)(19) assign responsibilities for services of common concern

3(d)(1)(xii) promote development and maintenance by CIA of services of common concern

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(d)(20) develop security standards

Intelligence information and material;

granting of access to such;

entering into security agreements for protection of such

(d)(21) be responsible for security of U.S. communications (COMSEC)

(d)(22) establish procedures for retention, disclosure and dissemination of information acquired by IC entities

(d)(23) formulate with SECDEF plans for SECDEF use of such IC elements as may be required in time of war

(d)(24) terminate employment of employees of CIA, NSA and special offices for reconnaissance when necessary or advisable

(d)(25) review reports of IGs of IC entities

(d)(26) provide appropriate Congressional committees requested information on budget and fiscal affairs of IC entities

(d)(27) provide such administrative, technical and support activities in U.S. and abroad as needed to executive duties of DNI and IC entities

3(d)(1)(vii) ensure appropriate programs are developed to protect intelligence sources, methods and analytical procedures

3(d)(1)(x) ensure establishment of common security standards for managing, handling systems, information and products and granting access thereto

3(d)(1)(viii) establish a vigorous program to downgrade and declassify foreign intelligence information

3(d)(1)(ix) ensure existence of strong IG capabilities in all IC elements and submission of quarterly IG reports to IOB

(e) obtain from IC entities such information from IC entities as DNI deems necessary to perform his duties

(No mention of NSC committee comparable to the CFI; in essence, DNI has the CFI role)

(Sec. 108 authorizes DNI to establish necessary committees, boards and advisory committees)

3(d)4 requires departments and agencies to provide DCI access to relevant information

3(d)(1)(i) chair the CFI

3(d)(1)(ii) Act as executive head of CIA;

3(d)(1)(xiii) establish criteria for critical intelligence and provide SECDEF guidance on communications requirements for such intelligence

3(d)(1)(xiv) establish appropriate committees of collectors, producers and users of intelligence.

A REVIEW

"NATIONAL INTELLIGENCE ACT OF 1977"

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Sec. 101. Short Title

This draft contains only part of Title 1 of the "Intelligence Reorganization Act of 1977" and this section states "this title" may be cited as the "National Intelligence Act of 1977."

Sec. 102. Statement of Purposes

This section poses no problems. It improves on the wording of Sec. 2 of the 29 March draft and adds a new purpose: "To provide for the appointment of a Director of National Intelligence." Since no mention is made in the later listing of the DNI's responsibilities that he will be the operating head of the CIA, it is assumed the SSCI intends there will be a separate CIA Director. (The proposed charter for CIA is still being drafted by the SSCI staff.)

Sec. 103. Definitions

a. The definition of the "Intelligence Community" includes all of the present components as designated in E.O. 11905, plus "the intelligence components of the Drug Enforcement Administration," and "such other entities of the Federal Government to the extent that such entities engage in national intelligence activities as determined by the President."

b. The definition of "intelligence activities" poses no problem except that it includes "any special activity" (meaning covert action).

c. The definitions of "national" and "departmental" intelligence attempt to make the distinction on the basis of primary use and fail to recognize that the same information may well be required for both purposes. More work is needed on these definitions.

d. Definitions have been added for "tactical intelligence," "tactical intelligence activities," and "intelligence-related activities."

e. Definition of "counterintelligence activities" has been expanded from the 29 March draft to include "and any measures by the Government of the United States to counter such [foreign] attempts" [to acquire U.S. information].

f. A new term "exceptionally sensitive clandestine collection project" has been added. It applies to secret intelligence collection activity which if discovered or revealed would be "likely to cause serious harm" to the U.S.

g. A "sensitive clandestine collection project" is one which if discovered or revealed "might cause significant harm or embarrassment to the United States or which might significantly affect a national of the United States who has no connection with the Intelligence Community." This latter phrase was not in the 29 March draft.

Sec. 104. National Intelligence Activities; Authorization

This section provides that national intelligence activities are subject to the "direction and control" of the NSC, and that intelligence dissemination is to be "to the executive and legislative branches"--presumably on a co-equal basis.

Sec. 105. Deputy and Deputy Director

Except for omission of any mention of the CIA, this section picks up the provisions of Sec. 102 (a) and (b) of the National Security Act of 1947. Term of the DNI and his Deputy is limited to six years, but each may be reappointed by the President subject to the advice and consent of the Senate.

Sec. 106. Authorities and Duties of the Director

This lengthy listing of responsibilities and authorities of the DNI is in many ways the heart of the bill. It is obviously intended to put the DNI in a very strong position. A comparison of the DNI authorities and duties as set forth in this draft with the provisions of E.O. 11905 is presented in a separate paper.

Sec. 107. Departmental Responsibility for Reporting National Intelligence

The basic element of this section is the requirement that all national intelligence obtained by departments and agencies and operational military commands be "promptly furnished" to the DNI "or to the entity of the Intelligence Community designated by the Director to receive such intelligence."

Sec. 108. Assistant Directors, Staff, Committees and Boards

a. This section provides for not more than four Assistant Directors of National Intelligence, and authorizes the DNI to employ personnel for his staff and establish such committees, boards and advisory committees as are necessary.

b. Material in earlier drafts which defined the duties of the individual Assistant Directors has been deleted.

c. This section poses no problem areas.

Sec. 109. Report of Violations

Provision is made for reporting by the Director on improper or illegal intelligence activities to the Attorney General, the Intelligence Oversight Board, the President and the appropriate committees of the Congress. This would not be significantly different from present arrangements.

Sec. 110. Records

a. In essence, this section requires the DNI and heads of intelligence entities to maintain "full and complete" records of national intelligence activities and to make such available on the request of any Congressional committee "having jurisdiction over matters relating to national intelligence activities."

b. This section is undoubtedly a reaction to what the Senator Church and Representative Pike committees considered was inadequate recordkeeping in the Intelligence Community.

c. Since the Director is charged with maintaining a "complete record of all legal authorities and published regulations and instructions" affecting national intelligence, and making copies available on request to Congressional committees, question can be raised as to why the bill also provides a complete file be maintained in the Office of the Federal Register.

Sec. 111. Requirements Relating to Appropriations for National Intelligence Activities

a. Earlier drafts of this section had provided that all funds for national intelligence activities were to be appropriated to the Director. This draft omits any mention of this, but would require the head of each IC entity to advise the DNI of any proposed re-programming or transfer of funds and DNI "approval shall be required for any such reprogramming or transfer."

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b. Legislative authorization would be required prior to any appropriation of funds for any national

c. Provision is made for accounting for funds on the certificate of the Director and for a Contingency Reserve Fund. Expenditure of reserve funds requires 72-hour prior notification within 48 hours of the initiation of the activity involved, along with certification that the delay involved in prior notification would have been harmful to the United States.

Sec. 112. Operations Coordinating Committee; Restrictions and Requirements Regarding Certain Activities, Projects and Changes

a. This section provides for a committee quite comparable to the Operations Advisory Group set up by E.O. 11905 and now succeeded by the NSC Special Coordination Committee.

b. It might be argued that the section infringes on Presidential prerogatives by spelling out in detail the decision process the President must follow in his consideration of special activities.

c. The bill would put a very strict limitation on covert action by requiring that "no proposed special activity may be approved by the President unless he finds that:

"(1) Such proposed activity is essential to the national security of the United States;

"(2) Such proposed activity is consistent with publicly expressed and defined foreign policy goals of the United States..."

d. The Operations Coordinating Committee would deal with both proposed and review of ongoing special activity, exceptionally sensitive clandestine collection projects and sensitive clandestine collection projects.

e. The section provides for prior notification to the Congress, but, if this is not possible, notification must be within 48 hours of initiation of the activity.

f. A semi-annual written report to the Congress is to be provided by the DNI on all activities under cognizance of the Operations Coordinating Committee.

Sec. 113. Counterintelligence Committee; Restrictions and Requirements Regarding Counterintelligence Activities

a. This section establishes a NSC Counterintelligence Committee and gives it strong powers (Assist the President in formulating counterintelligence policy and objectives, supervise counterintelligence activities, establish uniform standards and doctrines, direct CI coordination and adjudicate disagreements, assess the foreign threat to the U.S. and the effectiveness of the U.S. response, and review proposals to initiate, change or terminate important CI activities.).

b. The DNI is to report annually in writing to appropriate committees of the Congress on matters within cognizance of the Counterintelligence Committee, and semi-annually on CI activities that have been approved by the President. The Director also is to certify annually to the Congress that CI activities have been legal and proper, and identify any he has reason to believe were not so conducted.

c. This section would provide for a strong overview of U.S. counterintelligence activities which does not now exist. The provisions of the bill--other than those relating to reporting to the Congress--are generally in consonance with what the DCI has been seeking.

Sec. 114. Intelligence Oversight Board; Inspectors General, General Counsels, and Heads of Intelligence Entities; Requirements

a. This section creates an Intelligence Oversight Board quite comparable in role and functions to the one established by E.O. 11905.

b. Sec. 109 provides for DNI reporting to the Congress on matters within jurisdiction of the IOB.

Sec. 115. Prohibition Against the Use of Journalists, Government Grantees, and Individuals who Follow Religious Vocations for Certain Intelligence Activities

a. This section puts strict limitations on provision of pay or other valuable consideration to personnel in categories identified in the title.

b. Question can be raised as to whether the present wording will not seriously inhibit, if not end, research sponsored in academic institutions by intelligence organizations.

Sec. 116. Prohibition Against Use of Nationals of the United States as Combatants in Foreign Countries

a. Contrary to the title, this section has a very narrow application. It provides that no U.S. national who is not a member of the armed services may be assigned by any entity of the Intelligence Community as a combatant in a foreign country unless the President has approved such assignment and the DNI has notified appropriate committees of the Congress.

Sec. 117. Prohibitions on Particular Forms of Special Activities

a. Contents of this section have not yet been provided.

Sec. 118. Annual Review and Report

The President's Foreign Intelligence Advisory Board (PFIAB) is not mentioned, but this section would in effect establish a replacement for the PFIAB--the National Intelligence Activities Review Board which would report at least annually to the President and the appropriate committees of the Congress. Nine members would be appointed by the President, by and with the advice and consent of the Senate.

Sec. 119. Congressional Committee Reports

Regular, periodic reports will be made to the Senate and House by committees having jurisdiction over matters relating to national intelligence activities. The committees shall make such reports "in a manner consistent with the protection of the national security interests of the United States."

Sec. 120. Annual Report of the Director

a. This section provides the DNI shall make two annual reports on activities of the Intelligence Community and the intelligence activities of foreign countries directed against the U.S. or its interests. One report--presumably classified--will be made to appropriate committees of the Senate and House of Representatives, and the other will be an unclassified annual report to be made available to the public.

b. The DCI submitted an annual report to the President and the Congress at the end of 1976, but its format and extent of coverage would have to be changed markedly to meet the requirement set forth in this section.